

No. 16024 ✓

---

---

United States  
Court of Appeals  
for the Ninth Circuit

—

ADVANCE TRUCK COMPANY, a Corporation,  
Petitioner,  
vs.  
COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

—

Transcript of Record

—

Petition to Review a Decision of the Tax Court  
of the United States

FILED

AUG - 4 1958



No. 16024

---

United States  
Court of Appeals  
for the Ninth Circuit

---

ADVANCE TRUCK COMPANY, a Corporation,  
Petitioner,  
vs.  
COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

---

Transcript of Record

---

Petition to Review a Decision of the Tax Court  
of the United States



## INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Answer .....	16
Appearances .....	1
Certificate of Clerk.....	54
Decision .....	47
Docket Entries .....	52
Findings of Fact and Opinion.....	39
Petition .....	3
Exhibit A—Notice of Deficiency.....	9
Petition for Review.....	48
Statement of Points to Be Relied Upon.....	51
Stipulation of Facts.....	20
Ex. 1-A—Letter to Advance Truck Com- pany .....	27
2-B—Income Tax Report for 1950.....	30
6-F—Claim for Refund.....	37



## APPEARANCES

CHARLES H. CHASE,  
Suite 808, 650 So. Spring St.,  
Los Angeles, Calif.,  
For the Petitioner.

CHARLES K. RICE,  
Asst. U. S. Attorney General;

LEE A. JACKSON,  
Attorney,  
Department of Justice,  
Washington 25, D. C.,  
For the Respondent.





The Tax Court of the United States

Docket No. 59010

ADVANCE TRUCK COMPANY, a Corporation,  
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

PETITION FOR A REDETERMINATION OF  
INCOME AND EXCESS PROFITS DE-  
FICIENCY AND FOR REFUND OF IN-  
COME AND EXCESS PROFITS TAXES

Advance Truck Company, the petitioner, hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Internal Revenue Service symbols AP: LA:AA:DRR 90-D), dated May 11, 1955, and for a determination of refund of income taxes; and as a basis of its proceeding the petitioner alleges as follows:

I.

The petitioner is a corporation, duly organized and existing under the laws of the State of California, with its principal office at 21740 Alameda Street, Long Beach 10, California. The return for the period herein involved was filed with the Director of Internal Revenue for the Los Angeles, California, District.

## II.

The notice of deficiency (a copy of which is attached, marked Exhibit A, and made a part hereof) was mailed to the petitioner on May 11, 1955.

## III.

The deficiency as determined by the Commissioner is in income and excess profits tax for the taxable year ended December 31, 1950, in the amount of \$3,618.14 all of which is in dispute. In addition, the petitioner claims a refund of income and excess profits tax paid by it for the taxable year ended December 31, 1950, in the amount of \$5,348.06, or such other amount as the Court may determine.

## IV.

The determination of tax set forth in the notice of deficiency is based upon the following errors:

(a) The respondent erred in determining that the petitioner was required to report its income on the accrual method of accounting for the taxable year ended December 31, 1950.

(b) The respondent erred in adding to petitioner's income for the taxable year ended December 31, 1950, accounts receivable as of December 31, 1950, in the amount of \$18,467.96.

(c) In the alternative, if the respondent correctly determined that the petitioner was required to report its income on the accrual method, the respondent erred in adding to petitioner's income for the taxable year ended December 31, 1950, accounts receivable as of December 31, 1949, in the amount of \$20,431.48.

(d) The respondent erred in not determining that the petitioner is entitled to a refund of income and excess profits taxes for the taxable year ended December 31, 1950, in the amount of at least \$5,348.06.

V.

The facts upon which petitioner relies as the basis of this proceeding are as follows:

1. The petitioner was incorporated under the laws of the State of California in 1923.

2. The petitioner is engaged in the business of hauling and storing tubular goods. It does not engage in manufacturing, processing, selling or purchasing merchandise. Its business does not require the use of inventories, and inventories are not an income producing factor.

3. From the date of its incorporation through and including the year 1949 the petitioner has kept its books of account and reported its income on the cash receipts and disbursements method of accounting.

4. In the year 1950 the petitioner was required by the Interstate Commerce Commission to keep its books of account according to the method prescribed by that regulatory body. This method requires the accrual of items of income and expense.

5. On or before March 15, 1951, the petitioner filed its income tax return for the taxable year ended 1950 in which it reported gross receipts from its operations in the amount of \$284,092.54. Included in

income to petitioner in the taxable year ended December 31, 1951.

Wherefore, the petitioner prays that the Court may hear this proceeding, and make the following determinations:

(a) That there are no deficiencies in the income and excess profits taxes of the petitioner for the taxable year ended December 31, 1950.

(b) That the petitioner overpaid its income for the taxable year ended December 31, 1950, in at least the amount of \$5,348.06.

(c) That the overpayment of taxes was paid by the petitioner within the periods prescribed in subsection 6512(b) (2) of the Internal Revenue Code of 1954.

(d) That the petitioner shall have such other and further relief in the premises as the Court may deem fit and proper.

Dated: July 27th, 1955.

/s/ JOHN B. MILLIKEN,

/s/ RALPH KOHLMEIER,

/s/ HARRISON HARKINS,

/s/ FRANK W. CLARK, JR.,

/s/ WALTER R. HILKER, JR.,

/s/ CHARLES H. CHASE.

Of Counsel:

/s/ L. A. LUCE.

Duly verified.

EXHIBIT A

U. S. Treasury Department  
Internal Revenue Service  
Regional Commissioner  
1250 Subway Terminal Building  
417 South Hill Street  
Los Angeles 13, California

In Replying Refer to  
Ap:LA:AA-DRR  
90-D

May 11, 1955.

Advance Truck Company,  
21740 Alameda Street,  
Long Beach 10, California.

Gentlemen:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1950, discloses a deficiency of \$3,618.14, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday or legal holiday in the District of Columbia,

in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays and holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form, in duplicate, and forward it to the Assistant Regional Commissioner, Appellate, 1250 Subway Terminal Building, 417 South Hill Street, Los Angeles 13, California. The signing and filing of this form will expedite the closing of your returns by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment, or on the date of payment, whichever is earliest.

Very truly yours,

T. COLEMAN ANDREWS,  
Commissioner of Internal  
Revenue;

By /s/ H. L. DUCKER,  
Associate Chief, Appellate Division.

Enclosures:

Statement  
Form 1276  
Agreement Form  
Exhibit A



Ap:LA:AA-DRR  
90D

Statement

Advance Truck Company,  
21740 Alameda Street,  
Long Beach 10, California.

Tax Liability for the Taxable Year  
Ended December 31, 1950

Income Tax

Year	Deficiency
1950 .....	\$3,618.14

In making this determination of your income tax liability careful consideration has been given to the report of examination dated November 25, 1953, to your protest dated January 6, 1954, and to the statements made at the conferences held on March 20, 1954, and March 3, 1955.

During the year 1950 you changed, without obtaining the Commissioner's consent, the method of accounting in keeping your books from the cash basis to the accrual basis. Your corporation income tax return for the calendar year 1950 which was prepared and filed in accordance with the new basis of accounting (accrual) has been accepted.

Under the provisions of Section 41 of the Internal Revenue Code of 1939 a taxpayer who changes the method of accounting employed in keeping his books shall, before computing his income upon such new method for purposes of taxation, secure the consent of the Commissioner. However, the courts have held the requirement of the Commissioner's approval of a change in accounting method is satisfied without express permission where the Commissioner accepts the return.

If a petition to The Tax Court of the United States is filed against the deficiency proposed herein, the issue set forth in your claim for refund should be made a part of the petition to be considered by The Tax Court in any redetermination of your tax liability. If a petition is not filed, the claim for refund will be disallowed and official notice will be issued by

registered mail in accordance with section 2773 of the Internal Revenue Code of 1939.

A copy of the letter and a copy of this statement have been mailed to your representative, Mr. Charles B. Lafferty, 650 South Spring Street, Los Angeles 14, California, in accordance with the authorization contained in the power of attorney executed by you.

Adjustments to Net Income  
Taxable Year Ended December 31, 1950

	Income Tax	Excess Profits Tax
Net income disclosed by return.....	\$78,014.16	\$75,996.41
Unallowable deductions and additional income:		
(a) Interest disallowed .....	600.00	600.00
(b) Franchise tax disallowed .....	2,975.20	2,975.20
	\$81,589.36	\$79,571.61
Net income adjusted.....	\$81,589.36	\$79,571.61

Explanation of Adjustments

(a) In your return for the year 1950 you took a deduction of \$4,956.69 as interest expense, which amount included payments made to F. W. Appleton of \$600.00. It is held that these payments were in the nature of a preferential dividend and are disallowed as a deduction.

(b) The deduction you claimed for California franchise tax in the amount of \$6,284.76 includes the tax for doing business in 1950, based on 1949 income, and also the tax for doing business in 1951, based on 1950 income. It is held that the tax for doing business in 1951 is not an allowable deduction in the year 1950 and is disallowed in the amount of \$2,975.20.

Excess Profits Credit Based on Income  
Taxable Year Ended December 31, 1950

Excess profits credit as shown on return.....	\$63,157.45
Corrected excess profits credit per Exhibit A.....	52,737.38
	\$10,420.07
Decrease .....	\$10,420.07



Income and Excess Profits Tax Computation  
Taxable Year Ended December 31, 1950

Income Tax

Net income .....	\$81,589.36
Less: Dividends received credit .....	315.56
	<hr/>
Surtax net income .....	\$81,273.80
Combined normal tax and surtax:	
(42% of \$81,273.80 minus \$4,750.00).....	\$29,385.00

Alternative Tax

Net income .....	\$81,589.36
Less: Excess of net long-term capital gain over net short-term capital loss .....	1,646.50
	<hr/>
Ordinary net income .....	\$79,942.86
Less: Dividends received credit .....	315.56
	<hr/>
Surtax net income .....	\$79,627.30
Partial tax (42% of \$79,627.30 minus \$4,750.00).....	\$28,693.47
Plus: 25% of long-term capital gain.....	411.63
	<hr/>
Alternative tax .....	\$29,105.10

Excess Profits Tax

Excess profits net income.....	\$79,571.61
Less: Excess profits credit.....	52,737.38
	<hr/>
Adjusted excess profits net income	\$26,834.23
(a) 30% of \$26,834.23.....	\$ 8,050.27
(b) 62% of \$79,571.61.....	\$49,334.40
Less: Normal tax and sur- tax on \$79,571.61.....	28,670.08
	<hr/>
Line (a) or (b), whichever is less..	\$ 8,050.27

Excess profits tax (184/365 × \$8,050.27) .....		\$ 4,058.22
Income tax (alternative tax appli- cable) .....		29,105.10
		<hr/>
Total income and excess profits tax liability .....		\$33,163.32
Tax assessed:		
Original, account No. 4101582.....	\$27,603.51	
Amended return, account No. 8-410500 .....	1,941.67	29,545.18
	<hr/>	<hr/>
Deficiency of income and ex- cess profits tax.....		\$ 3,618.14

Excess Profits Credit Based on Income  
Taxable Year Ended December 31, 1950

General Average Method

Base Period Years	1946	1947	1948	1949
Excess profits net income per return.....	0	\$39,164.58	\$67,170.90	\$71,427.85
Less: Long-term capital gain .....	--	-----	-----	8,095.92
	<hr/>	<hr/>	<hr/>	<hr/>
Excess profits net income as corrected....	0	\$39,164.58	\$67,170.90	\$63,331.93
Number of months in base period .....	12	12	12	12
Number of months selected .....		12	12	12
Excess profits net in- come for 36 months....				\$169,667.41
Average base period net income (\$169,667.41 ÷ 3) .....				\$ 56,555.80

Growth Method

Date of commencement of business.....		1923
Total assets as of January 1, 1946, the first day of base period.....		\$268,783.20
(1) Last half of base period.....	Total Payroll \$310,216.77	Gross Receipts \$679,521.45
(2) First half of base period.....	227,278.34	440,076.96
Percentage which line (1) is of line (2) .....	136%	154%
Excess profits net income for last 24 months of base period.....	130,502.83	
(3) One-half of \$130,502.83.....		65,251.42
(4) Excess profits net income for last 12 months in base period.....		63,331.93
(5) Weighted excess profits net in- come for first 6 months of 1950....	\$ 31,828.62	
(6) Excess profits net income for last 6 months of 1949.....	31,665.97	
(7) Total of line (5) and line (6)....		\$ 63,494.59
Average base period net income based on growth, highest of lines (3), (4), or (7) .....		65,251.42
(8) 85% of \$65,251.42.....		55,463.71
(9) 85% of general average of \$56,555.80 .....		48,072.43
Line (8) or (9), whichever is greater .....		55,463.71
12% of net capital addition for tax- able year .....		0.00
Total .....		\$ 55,463.71
12% of net capital reduction for taxable year .....		2,726.33
Excess profits credit based on in- come .....		\$ 52,737.38

## Weighted Excess Profits Net Income for First 6 Months of 1950

(a) Excess profits net income .....	\$ 79,571.61
(b) Percentage applicable .....	80
(c) Weighted excess profits net income, (a) × (b) .....	63,657.29
(d) Monthly average .....	5,304.77
(e) Number of months between January 1 and June 30, 1950 .....	6
(f) Weighted excess profits net income for first six months, line (d) multiplied by line (e).....	31,828.62

## Taxable Year Capital Addition or Reduction

Borrowed Capital	1/1/50	12/31/50
J. H. Baxter Company Trust Deed..	\$ 50,054.18	\$ 38,678.18
Security Bank Trust Deed .....	19,686.07	16,395.73
Security Bank Note .....	52,050.00	0.00
Total .....	<u>\$121,790.25</u>	<u>\$ 55,073.91</u>
(1) Borrowed capital at beginning of first taxable year ending after June 30, 1950.....		\$121,790.25
(2) Average daily amount of borrowed capital for taxable year .....		91,507.15
Net capital reduction, 75% of excess of line (1) over line (2) .....		22,712.33
12% of \$22,712.33 .....		2,726.33

Received and filed August 3, 1955, T.C.U.S.

Served August 4, 1955.

[Title of Tax Court and Cause.]

## ANSWER

The Commissioner of Internal Revenue, by his attorney, John Potts Barnes, Chief Counsel, Internal Revenue Service, for answer to the petition of the above-named taxpayer, admits and denies as follows:

I, II.

Admits the allegations contained in paragraphs I and II of the petition.

III.

Admits that the deficiency as determined by the Commissioner is in income and excess profits tax for the taxable year ended December 31, 1950, in the amount of \$3,618.14 all of which is in dispute. Denies the remaining allegations contained in paragraph III of the petition.

IV.

Denies the allegations of error contained in paragraph IV of the petition, and all subparagraphs thereof.

V.

1. Admits the allegations contained in subparagraph 1 of paragraph V of the petition.

2. Admits that the petitioner is engaged in the business of hauling and storing. Denies the remaining allegations contained in subparagraph 2 of paragraph V of the petition.

3. 4. Admits the allegations contained in subparagraphs 3 and 4 of paragraph V of the petition.

5. Admits that on or before March 15, 1951, the petitioner filed its income tax return for the taxable year ended 1950 in which it reported gross receipts from its operations in the amount of \$284,092.54. Included in this amount was the sum of \$18,467.96

which represented accounts receivable at December 31, 1950. Admits that petitioner, in its return, reported cost of operations in the amount of \$140,629.46 and included the amount of \$196.20 which represented accounts payable at December 31, 1950. Admits that the amount of income and excess profits tax shown to be due on the return was in the amount of \$27,603.57. Denies the remaining allegations contained in subparagraph 5 of paragraph V of the petition.

6. Admits that the petitioner filed an amended income tax return for the taxable year ended December 31, 1950, showing an additional amount of income and excess profits tax due. Denies the remaining allegations contained in subparagraph 6 of paragraph V of the petition.

7. Admits the allegations contained in subparagraph 7 of paragraph V of the petition.

8. Admits that on or about January 14, 1954, the petitioner filed an additional amended income tax return for the taxable year ended December 31, 1950, in which it reported gross receipts from its operations in the amount of \$265,624.58 and cost of operations in the amount of \$140,433.26. Admits that the total income and excess profits tax shown to be due by the petitioner in this amended return was in the amount of \$24,197.12. Denies the remaining allegations contained in subparagraph 8 of paragraph V of the petition.

9. Denies the allegations contained in subparagraph 9 of paragraph V of the petition.

10. Admits that the petitioner on or about January 14, 1954, filed a claim for refund of income and excess profits taxes for the taxable year 1950, in the amount of \$5,348.06. Denies the remaining allegations contained in subparagraph 10 of paragraph V of the petition.

11. For lack of sufficient information, denies the allegations contained in subparagraph 11 of paragraph V of the petition.

12, 13. Denies the allegations contained in subparagraphs 12 and 13 of paragraph V of the petition.

## VI.

Denies generally and specifically each and every allegation contained in the petition, not hereinbefore expressly admitted, qualified or denied.

Wherefore, it is prayed that this appeal be denied and that the respondent's determination be sustained.

/s/ JOHN POTTS BARNES, R.E.M.  
Chief Counsel,  
Internal Revenue Service.

Of Counsel:

MELVIN L. SEARS,  
Regional Counsel;

E. C. CROUTER,  
Assistant Regional Counsel;



R. E. MAIDEN, JR.,  
Special Assistant to the  
Regional Counsel;

MARK TOWNSEND,  
Attorney, Internal Revenue  
Service.

Filed: September 27, 1955, T.C.U.S.

---

[Title of Tax Court and Cause.]

### STIPULATION OF FACTS

It Is Hereby Stipulated and Agreed by the parties to this proceeding, through their respective counsel of record, that the facts stated in, or incorporated into, this stipulation are true and may be found as facts by the Court.

1. The petitioner was incorporated in 1932 and is now a corporation duly organized and existing under the laws of the State of California, with its principal place of business at 21740 Alameda Street, Long Beach 10, California. During all of the years mentioned herein, the petitioner filed its tax returns on a calendar year basis with the Collector of Internal Revenue for the 6th District of California, Los Angeles, California, and his successor, the Director of Internal Revenue for the Los Angeles, California District.

2. The petitioner is a common carrier and is engaged in the business of hauling and storing



tubular goods for hire. It does not engage in manufacturing, processing, purchasing or selling merchandise. Its business does not require the use of inventories, and inventories are not an income producing factor. At no time mentioned herein has the petitioner changed its type of business operation.

3. From the date of its incorporation through December 31, 1949, it properly kept its books of account and properly reported its income for Federal income tax purposes on the cash receipts and disbursements method.

4. On January 16, 1950, the petitioner received a letter from the Interstate Commerce Commission informing the petitioner that it was classified as a Class 1 Motor Carrier. Said letter, a copy of which is attached hereto as Exhibit 1-A, further stated that effective as of January 1, 1950, the petitioner would be required to keep its accounts in conformity with the Uniform System of Accounts prescribed by the Interstate Commerce Commission.

5. The system of accounting prescribed by the Interstate Commerce Commission is set forth in Uniform System of Accounts for Class I Common and Contract Motor Carriers of Property, Prescribed by the Interstate Commerce Commission in accordance with part II of the Interstate Commerce Act. Issue of 1948. United States Government Printing Office. Washington: 1948. Said document is hereby incorporated by reference and will hereinafter be referred to as "The Uniform System of Accounts."

6. Instruction 2 of the Uniform System of Accounts provides in part as follows:

“(a) All of the accounts prescribed in this system of accounts shall be kept when applicable and entries recorded by the double entry method. Each account in the general or subsidiary ledgers shall reflect the prescribed account number \* \* \*”

Instruction 3 provides in part as follows:

“(a) Each carrier shall keep its books on a calendar year basis and for each month (or 4-week period—see note) all transactions applicable thereto, as nearly as can be ascertained (see instruction 9), including full accruals, shall be entered in the books of original entry (cash books, purchase journal, etc.), and posted to the general ledger.”

7. Section 222 (g) of the Interstate Commerce Act provides that willful failure or refusal to keep accounts and records in the form and manner prescribed by the Commission shall be a misdemeanor punishable by a fine of not more than \$5,000.00 for each offense.

8. In conformity with the directive of the Interstate Commerce Commission the petitioner, as of January 1, 1950, changed its method of accounting to the method prescribed in the Uniform System of Accounts by numbering its existing accounts as prescribed and adding balance sheet accounts which it had not previously used in its accounting. These additional accounts and their numbers were: 1120 Accounts Receivable; 1171 Prepaid Taxes and

Licenses; 2059 Accounts Payable; 2120 Taxes Accrued.

9. In accordance with the facts set forth in paragraphs 4, 5, 6, 7 and 8, petitioner has kept its books and records on an accrual basis commencing January 1, 1950, to the present time.

10. On or before March 15, 1951, the petitioner filed its income tax return for the calendar year 1950, in which it reported gross receipts from its operations in the amount of \$284,092.54. Included in this amount was income from services rendered in 1950 of \$18,467.96 which was represented by accounts receivable at December 31, 1950. Also included in gross receipts was the sum of \$20,431.48, which amount was collected during the month of January, 1950, for services rendered during the month of December, 1949. On the accrual method of accounting, these amounts would have represented accounts receivable at December 31, 1949.

The petitioner reported cost of operations in the amount of \$140,629.46, which sum included the amount of \$196.20 which represented accounts payable at December 31, 1950. The amount of income and excess profits tax shown to be due on the return was the sum of \$27,603.51.

11. The form 1120 for the calendar year 1950 was prepared by C. C. Carter, petitioner's secretary. Question 10 on said return was answered as follows: Is this return made on the basis of cash receipts and disbursements? Yes.

12. On or about July 2, 1951, the petitioner filed an amended income tax return for the calendar year 1950 showing an additional amount of income tax due. The total income and excess profits tax paid by the petitioner for the calendar year 1950 was in the amount of \$29,545.18.

13. The petitioner has not at any time filed an application requesting the permission of the respondent to change the method of keeping its books of account or manner of reporting its income from a cash receipts and disbursements method to an accrual method.

14. On or about January 14, 1954, the petitioner filed an additional amended income tax return for the calendar year 1950, in which it reported gross receipts from its operations in the amount of \$265,624.58 and cost of operations in the amount of \$140,433.26. These amounts would be the correct amounts received and disbursed by the petitioner during the calendar year 1950 on a cash basis. The total income and excess profits tax shown to be due by the petitioner in this amended return was in the amount of \$24,197.12.

15. In the preparation of the foregoing amended return the following adjustments were made: Income from services rendered in 1950 of \$18,467.96, which was represented by accounts receivable at December 31, 1950, was eliminated from gross receipts. Accounts payable in the amount of \$196.20 were eliminated from cost of operations. The deduction

for real estate taxes was decreased \$2,862.77. The deduction for Social Security and State Unemployment taxes was decreased \$423.46. The deduction for Franchise tax was decreased \$2,975.21. The deduction for interest was decreased \$600.00. The amounts of the decreases in real estate taxes and Social Security and State Unemployment taxes were the difference between the amounts deductible on a cash receipts and disbursements basis and the amounts deductible on an accrual basis. The decreases in Franchise taxes and interest were in the amounts determined as unallowable deductions by the respondent in his notice of deficiency dated May 11, 1955. These latter amounts are not properly deductible by the petitioner on either the cash or accrual method.

16. On or about January 14, 1954, the petitioner filed a claim for refund of income and excess profits taxes for the taxable year 1950 in the amount of \$5,348.06. The amount of the taxes which it is claimed was overpaid by petitioner as set forth in said claim for refund was paid within the period prescribed in subsection 6512 (b) (2) of the Internal Revenue Code of 1954.

17. On or before the due date thereof, petitioner filed its corporation income and excess profits tax returns for the calendar years 1951 and 1952. These returns were prepared on the accrual basis.

18. On January 14, 1954, the petitioner filed amended corporation income and excess profits tax returns for the years 1951 and 1952. These amended



returns were prepared on the cash basis. On January 14, 1954, the petitioner filed claims for refund of income taxes paid for the calendar years 1951 and 1952 on the grounds that its returns for said calendar years 1951 and 1952 were erroneously prepared on the accrual basis instead of the cash basis.

19. As shown on petitioner's income tax returns, the petitioner's net taxable income for the calendar year 1951 on the cash basis is \$3,336.73 less than on the accrual basis. As shown on petitioner's income tax returns, the petitioner's net taxable income for the calendar year 1952 on the cash basis is \$4,323.05 less than on the accrual basis.

20. The petitioner's income tax returns for the calendar years 1953, 1954, 1955 and 1956 were prepared on the cash basis. The determination of income for these returns on the cash basis was made from petitioner's books of account in the following manner. The accounts receivable, accounts payable, prepaid taxes and accrued payroll taxes at the end of a calendar year were eliminated in computing taxable income and the amounts accrued to these accounts at the beginning of the calendar year were included in computing taxable income. The State franchise tax accrued at the end of a calendar year was eliminated and the franchise tax paid during the calendar year was included. The accrued federal income tax on earnings for the calendar year was eliminated.

These adjustments are entered on the work papers of the accountant who prepares the petitioner's

yearly income tax return, but are not entered on petitioner's books of account.

21. Attached hereto as Exhibit 2-B, 3-C and 4-D are photostatic copies of petitioner's original and amended income tax and excess profits tax returns for the calendar year 1950.

June 12, 1957.

Respectfully submitted,

/s/ CHARLES H. CHASE,  
Counsel for Petitioner.

/s/ NELSON P. ROSE, R.E.M.  
Counsel for Respondent.

EXHIBIT 1-A

Interstate Commerce Commission  
Bureau of Accounts  
and Cost Finding  
Washington 25

Jan. 16, 1950.

Advance Truck Company,  
21740 Alameda Street,  
Long Beach 10, Calif.

Gentlemen:

The records of this Bureau indicate that your gross revenues are sufficient to classify you as a Class I motor carrier as provided in Instruction 1

of the Uniform System of Accounts prescribed by the Commission's order of November 21, 1950.

You will be required to keep your accounts in conformity with the provisions of the Uniform System of Accounts (a copy of which is enclosed) effective as of January 1, 1950. Please refer to Instruction 3 of the Uniform System of Accounts, which contains a mandatory provision requiring Class I motor carriers to keep their books on a calendar year basis.

As a Class I motor carrier you will be required to file a quarterly report for the quarter ending March 31, 1950, and for each quarterly period thereafter, such reports are required to be filed in the district office of the Bureau of Motor Carriers at San Francisco, Calif., within 30 days after the end of the quarter.

You will also be required to file an annual report for the year 1950 and for each year thereafter; such reports are due to be filed in duplicate in Washington, D. C., by March 31 of the year following.

For your information, there are enclosed copies of orders of the Commission prescribing the filing of quarterly and annual reports, together with sample copies of report forms. A supply of report forms will be furnished you through our regular mailing channels in sufficient time for preparation and filing of reports when due.

Effective as of January 1, 1950, in addition to any other requirements for the reporting of hours



of service of drivers to which you have heretofore been subject, you will become subject to the requirement for filing reports on BMC-57 covering each calendar month during which no driver exceeds the on duty or driving time permitted by Rule 191.3 of Part 5 of the Motor Carrier Safety Regulations. Such report must be prepared in triplicate and filed in duplicate in the office of the district director not later than the 15th day of the month next following that for which report is made. Triplicate copy must be retained in your files.

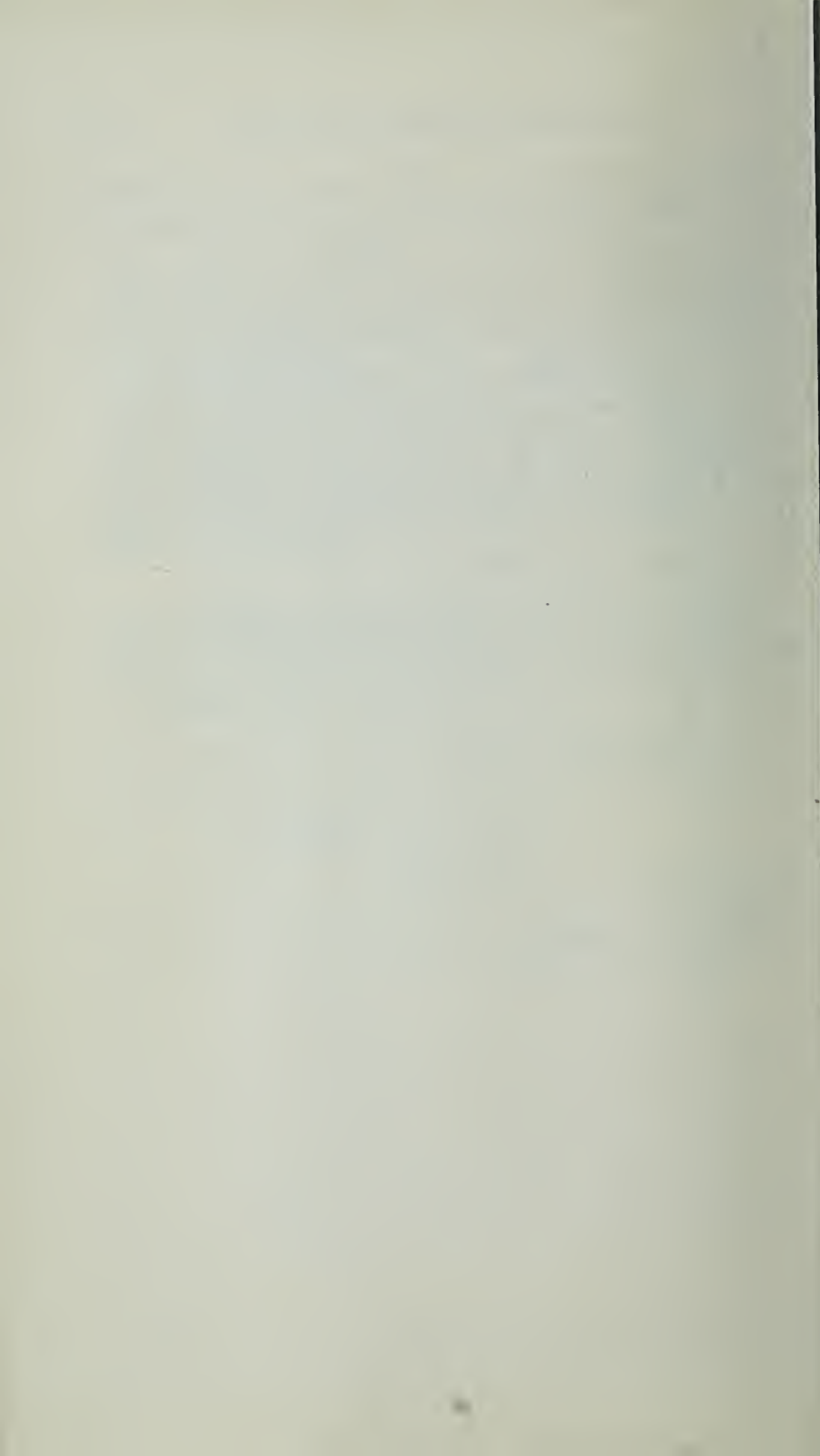
Please acknowledge receipt and understanding of this letter and if any further information is desired, do not hesitate to communicate with this Bureau.

Very truly yours,

/s/ FORD K. EDWARDS,  
Director.

Enclosures

cc—Director Dawson  
District No. 16

















DEPRECIATION

Truck No.	Make	Date Acquired	Cost	Salvage Value	Balance Depreciable	Depreciation Previously Taken	1950 Depn.	Totals
72	White	5-20-46	\$2500.00	\$ 125.00	\$ 2375.00	\$145.45	\$ 152.95	
74	Clark	0-21-46	1154.73	162.50	992.23	153.30	473.90	
75	Mack	1-18-47	2724.03	251.35	2472.68	151.82	1801.56	
76	Mack	1-18-47	2724.03	385.85	2338.18	201.83	1733.96	
77	Towmotor	2-8-47	2780.00	150.45	2629.55	153.74	574.33	
78	White	4-1-47	2420.44	421.10	2000.34	131.44	116.20	
79	White	4-10-47	2420.44	421.10	2000.34	131.44	1300.50	
80	Mack	7-18-47	2254.13	40.13	2214.00	131.44	1124.31	
81	Towmotor	8-2-47	2434.26	150.34	2283.92	131.44	54.14	
82	Mack	9-14-47	3124.64	421.10	2703.54	131.44	1156.31	
84	Towmotor	11-27-47	1440.00	90.00	1350.00	131.44	243.53	
85	Mack	12-17-47	2164.38	442.10	1722.28	131.44	1222.42	
86	Mack	12-27-47	2164.38	442.10	1722.28	131.44	1222.42	
88	Towmotor	6-1-48	2124.50	15.48	2109.02	131.44	624.51	
89	Mack	8-10-48	2224.50	44.48	2180.02	131.44	1224.74	
91	Mack	8-21-48	2124.50	44.48	2080.02	131.44	1324.26	
92	Cushman	10-13-48	1524.50	17.28	1507.22	131.44	504.68	
			<u>16724.19</u>	<u>714.41</u>	<u>16009.78</u>	<u>1474.28</u>	<u>1421.67</u>	<u>14,861.66</u>
<b>Trailers:</b>								
201	Utility	1-1-44	184.00	64.35	119.65	136.30	268.90	
202	"	11-1-44	184.00	64.35	119.65	136.30	268.90	
203	"	11-1-44	184.00	64.35	119.65	136.30	268.90	
204	"	11-1-44	184.00	64.35	119.65	136.30	268.90	
305	"	8-1-45	241.00	11.00	230.00	156.65	343.74	
306	"	8-1-45	241.00	11.00	230.00	156.65	343.74	
307	"	1-1-46	241.00	11.00	230.00	156.65	343.74	
308	"	1-1-46	241.00	11.00	230.00	156.65	343.74	
309	"	1-1-46	241.00	11.00	230.00	156.65	343.74	
310	"	1-1-46	241.00	11.00	230.00	156.65	343.74	
311	"	1-1-46	241.00	11.00	230.00	156.65	343.74	
206	"	1-1-46	154.00	4.00	150.00	107.90	100.70	
207	"	1-1-46	154.00	4.00	150.00	107.90	100.70	
208	"	8-20-46	154.00	4.00	150.00	107.90	100.70	
311	"	8-27-46	154.00	4.00	150.00	107.90	100.70	
312	"	8-20-46	154.00	4.00	150.00	107.90	100.70	
209	"	3-20-47	217.00	14.51	202.49	111.37	401.46	
210	"	4-4-47	217.00	14.51	202.49	111.37	401.46	
313	"	4-4-47	174.00	12.49	161.51	100.00	401.46	
351	"	4-25-47	1941.00	100.00	1841.00	1480.00	541.43	
211	"	1-3-47	216.34	14.51	201.83	136.96	414.46	
212	"	1-3-47	216.34	14.51	201.83	136.96	414.46	
213	"	1-3-47	216.34	14.51	201.83	136.96	414.46	
214	"	1-3-47	216.34	14.51	201.83	136.96	414.46	
314	"	1-3-47	216.34	14.51	201.83	136.96	414.46	
315	"	1-3-47	216.34	14.51	201.83	136.96	414.46	
316	"	1-3-47	216.34	14.51	201.83	136.96	414.46	
317	"	1-3-47	216.34	14.51	201.83	136.96	414.46	
352	"	1-1-48	241.00	11.00	230.00	156.65	343.74	
353	"	8-1-48	241.00	11.00	230.00	156.65	343.74	
			<u>26724.19</u>	<u>1144.41</u>	<u>25579.78</u>	<u>11431.34</u>	<u>11,431.34</u>	<u>11,431.34</u>
<b>Automobiles:</b>								
87	Cadillac	8-27-44	2724.03	162.50	2561.53	213.00	514.00	
90	Plymouth	8-16-46	174.00	11.00	163.00	91.31	251.31	
93	Cadillac	1-1-48	2124.50	44.48	2080.02	131.44	501.60	
			<u>5022.53</u>	<u>217.98</u>	<u>4804.55</u>	<u>435.75</u>	<u>1266.91</u>	<u>1,266.91</u>
								<u>27,637.71</u>

Continued Form 1-10-48, 2



DEPRECIATION (CONTINUED)

Buildings & Improvements:	Date Acquired	Cost	Depr'n. Previously Taken	1950 Depreciation		Totals
				Prot Fwd.	827,637.71	
Fence (Steel)	1-5-39	\$ 4086.58	\$ 2996.84	\$ 272.44	<b>123.00</b>	
Fence (Steel)	2-1-49	1231.66	113.60		261.74	
Roads	1-5-39	3918.60	2491.64		326.01	
Roads	8-15-39	4800.20	3921.11		111.36	
Office Bldg. (Frame)	10-1-39	1838.00	1437.01		157.29	
Roads	11-17-49	2358.23	1641.84		420.21	
Roads	5-1-41	6303.21	1653.51		131.69	
Roads	1-1-42	1076.67	727.41		146.60	
Garage (Frame)	1-1-45	2836.66	880.41		597.57	
Office (Frame)	3-1-45	9964.46	1888.96		398.40	
Roads	3-1-45	5976.60	506.88		172.66	
Roads	11-26-45	817.75	1747.50		687.54	
Pipe Racks	6-15-47	4533.62	678.56		289.28	
Pipe Racks	1-3-48	1928.52				
		<u>50,734.65</u>	<u>24,873.51</u>	<u>4,039.65</u>		<u>4,039.65</u>
Spur Track	9-18-43	6200.00	3900.81	620.00		620.00
TOTAL DEPRECIATION						<u>32,297.36</u>

RECAP:

Trucks	\$14,861.06
Trailers	11,431.34
Automobiles	1,345.31
Bldgs. & Improvements	4,039.65
Spur Track	620.00
	<u>32,297.36</u>

SCHEDULE B - Cost of Operations:

Salaries and Wages	\$ 110,089.37
Gasoline and Oil	17,667.43
Gasoline Tax	4,367.10
Parts and Repairs	7,012.74
Tires and Tubes	1,304.02
Purchased Transportation	980.00
Misc. Transportation Expense	493.88
Tariffs and Schedules	200.11
	<u>172,094.85</u>

SCHEDULE C - Other Deductions

Light, Power, Heat, Water	\$ 264.95
Insurance	11,439.42
Expenses of General Officers	86.07
Office Supplies & Expenses	1,983.97
Telephones	885.66
Employees Welfare Expense	728.00
General Expense	2,399.00
	<u>17,557.05</u>



Schedule J.—DEPRECIATION. (See Instructions 28)

Page 1

1. Kind of Property or building, from nature of utility contracts	2. Date Acquired	3. Original Cost (to be filled in only if depreciation property)	4. Accum. Dep. to End of Year	5. Depreciation 22 percent or otherwise as in Part 2	6. Remaining Value or Other Basis at End of Year	7. Depreciation Allowed for Year	8. Total Depreciation Allowed for Year	9. Remaining depreciable value at End of Year
SCHEDULE ATTACHED								
Total. (Enter as item 26, page 1.)								

Schedule K.—OTHER DEDUCTIONS. (See Instructions 29)

SCHEDULE ATTACHED

TAX COMPUTATION. (See Tax Computation Instructions)

CALENDAR YEAR 1959

For other taxable years ending after June 30, 1958, and before December 31, 1961, obtain from Collector Form 11287-T, and use table shown therein to compute the tax

Line No.

1. Net Income (Item 24, page 1) 78,014.16

2. Less: Dividends received credit (a) Enter 95 percent of amount in Schedule K (b) Enter 37 percent of amount in Schedule K 315.56

Total dividends received credit. Enter sum of (a) and (b); above, but not to exceed 95 percent of the amount of item 24, page 1, over the amount in item 9 (a) and (b), page 1

Credits for dividends paid on certain preferred stock if taxpayer is a public utility 315.56

Credits for Waters Rompage trade corporations 77,698.60

3. Shorter and surtax

4. Combined normal tax and surtax. If amount of line 3 is: 27,883.41

Not over \$20,000, enter 25 percent of line 3 (5 percent if a nonresident alien); 5,195.91

Over \$20,000 Compute 25 percent of line 3 (4 percent if a nonresident alien); 5,687.50 Excess \$4,790 Excess difference 27,883.41

5. Less: Normal tax adjustment for partially tax-exempt interest; enter 25 percent of the sum of items 9 (a) and 9 (b), page 1, but not in excess of 25 percent of line 3

6. Shorter adjustment for partially tax-exempt interest. If amount of line 5 is: 27,883.41

Not over \$20,000; enter zero

Over \$20,000; enter 1 percent of the lesser of (a) sum of items 9 (a) and 9 (b), page 1, or (b) line 5 minus \$20,000

7. Normal tax and surtax 27,883.41

8. Total tax (line 6, or line 25 of Schedule C) 27,603.51

QUESTIONS

- If this is the corporation's first return, indicate whether (a) completely new business, (b) extension to previously existing business which was organized as (1) corporation, (2) partnership, (c) or (3) sole proprietorship, or (4) other (indicate). If extension to previously existing business, give name and address of the previous business organization.
- Collector's office where the corporation's return for the preceding year was filed: Los Angeles
- Enter amount of income (or deficit) from item 22, page 1, Form 1120 for 1959: 77,780.35
- The corporation's books are in care of \_\_\_\_\_ Limited of \_\_\_\_\_
- Show the approximate number of stockholders at the close of the taxable year: 2
- Check if the corporation is a farmer, marketer or a farmer's purchasing cooperative association ( ), a consumer's cooperative association ( ), or other cooperative association ( ).
- Is the corporation a personal holding company within the meaning of Section 561 of the Internal Revenue Code? No (If so, an additional return on Form 1120-B must be filed.)
- Is this a nonresident alien? No (If so, provision from the schedule of Internal Revenue for your district Form 551, Affiliated Subchapter, which shall be filed in and filed as a part of this return.)
- If this is not a nonresident alien: (a) Did the corporation own or at any time during the taxable year 50 percent or more of the voting stock of another corporation in either domestic or foreign? No; or (b) did any corporation, individual, partnership, trust, or association own or at any time during the taxable year 50 percent or more of the corporation's voting stock? No (If either answer is "yes," attach separate schedule showing (1) Name and address, (2) percentage of stock owned, (3) date stock was acquired, and (4) the substance of action in which the income tax return of such corporation, individual, partnership, trust, or association for the last taxable year was filed.)
- In the return made on the basis of such receipt and disbursement? Yes If not, describe fully in separate statement.
- State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower. If other basis is used, explain fully in separate statement, giving date inventory was last recorded with such base specific Instruction 2).
- Did the corporation make a return of information on Form 1099 and 1095 as Form W-2a for the calendar year 1959 use Instruction C-(1)? Yes
- Has any transaction described in Instruction C-(2) occurred on or after October 3, 1947? (Answer "yes" or "no") No
- Did the corporation at any time during the taxable year own directly or indirectly any stock of a foreign corporation? No (If so, attach statement as required by Instruction K-(2).)

6



Schedule L—BALANCE SHEETS. (See Instructions L.)

	Beginning of Taxable Year		End of Taxable Year	
	Amount	Total	Amount	Total
<b>ASSETS</b>				
1. Cash:				
a. Notes and accounts receivable	\$	\$ 9,251.45	\$	\$ 9,688.30
b. Reserve for bad debts			18,467.96	18,467.96
2. Investments:				
a. Real estate:				
(1) Land				
(2) Work in process				
(3) Finished goods				
(4) Supplies				
3. Investments in governmental obligations:				
a. Obligations of the United States:				
(1) Obligations issued on or before September 1, 1917, of paring value (less the Treasury refund paid in December 1, 1945, and Treasury refund received in January 1, 1946)				
(2) Obligations issued on or after September 1, 1917, of paring value (less the Treasury refund paid in December 1, 1945, and Treasury refund received in January 1, 1946)				
(3) Obligations of Federal land banks, land bank, land bank, and other agencies created by the Government of the United States prior to August 1, 1945, the responsibility of the United States issued on or after March 1, 1941				
b. Other investments (Detailed)				
4. Capital assets:				
a. Depreciable assets (Detailed):				
(1) Buildings & improvements	63,160.90		63,160.90	
(2) Trucks, trailers, equipment	243,774.09		236,704.09	
(3) Total depreciable assets	306,934.99		299,864.99	
(4) Less: Reserve for depletion	153,160.33	153,774.66	178,743.19	121,123.80
(5) Depreciable assets				
(6) Less: Reserve for depletion				
b. Land		178,313.29		178,313.29
c. Other capital assets	6,475.68		6,620.93	
(1) Stocks			93,430.22	
(2) Notes receivable	87,213.72			
(3) Total other capital assets		93,689.40		98,053.15
(4) Total capital assets		432,528.80		425,644.90
5. Taxes accrued				195.20
<b>LIABILITIES</b>				
1. Amounts payable:				
a. Bonds, notes, and mortgages payable:				
(1) With original maturity of less than 1 year				
(2) With original maturity of 1 year or more				
b. Annual expenses (Detailed):				
(1) Yarns Withheld	121,790.25	121,790.25	55,073.01	55,073.01
(2) Other liabilities (Detailed):				
(3) Yarns Withheld	1,017.17		2,109.29	
(4) Other liabilities (Detailed):				
(5) Yarns Withheld	372.43	1,184.60	40.50	2,149.75
(6) Surplus reserves (Detailed)				
2. Capital stock:				
a. Preferred stock:				
(1) Number of shares or end of year—				
(2) Common stock (1,500)	150,000.00	150,000.00	150,000.00	150,000.00
b. Paid-in or capital surplus				
(1) Total surplus and undivided profits		159,553.95		183,698.67
(2) Total liabilities		432,528.80		425,644.90

**Schedule M—RECONCILIATION OF NET INCOME AND ANALYSIS OF EARNED SURPLUS AND UNDIVIDED PROFITS**

1. Total distributions to stockholders charged to earned surplus during the taxable year:		17. Earned surplus and undivided profits at close of preceding taxable year (Schedule L):	\$ 159,553.95
(a) Cash		18. Net income before net operating loss deduction (line 21, page 1):	78,014.16
(b) Stock of the corporation		19. Nontaxable interest on:	
(c) Other property		(1) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possession:	
2. Contributions or gifts (more over 5 percent (Detailed))		(2) Obligations of the United States:	
3. Federal income and excess profits taxes	54,374.71	(a) Obligations issued on or before September 1, 1917, all serial savings bonds, Treasury notes issued prior to December 1, 1945, and Treasury bills issued prior to March 1, 1941:	
4. Income taxes of foreign countries or United States possessions if claimed as a credit in whole or in part in Item 8b, page 1		(b) United States savings bonds and Treasury bonds owned in the principal amount of \$5,000 or less, issued prior to March 1, 1941:	
5. Federal taxes paid on tax-free corporate bonds		(c) Obligations of Federal land banks, joint stock land banks, and Federal land-bank-like entities, issued prior to March 1, 1941:	
6. Special depreciation losses resulting to increase the value of the property concerned		20. Other nontaxable income (Detailed):	
7. Depreciations, amortizations, and capital expenditures charged to expenses on the books		(1)	
8. Insurance premiums paid on the life of any officer or employee when the corporation is directly or indirectly a beneficiary		(2)	
9. Nontaxable interest received in purchasing or carrying exempt interest obligations		21. Changes against surplus reserves deducted from income in the return (Detailed):	
10. Dividends or capital gains over capital gains		(a)	
11. Additions to surplus reserves (not separately):		(b)	
(a)		22. Adjustments for tax purposes not recorded on books (Detailed):	
(b)		(a)	
(c)		(b)	
12. Other nondeductible deductions:		(c)	
(a)		23. Adjustments for tax purposes not recorded on books (Detailed):	
(b)		(a)	Depletion 505.29
(c)		(b)	
13. Adjustments for tax purposes not recorded on books (Detailed):		(c)	
(a)		24. Surplus reserves to earned surplus (Detailed):	
(b)		(a)	
(c)		(b)	
14. Surplus debits to earned surplus (Detailed):		(c)	
(a)		25. Total of lines 17 to 24:	\$ 238,073.40
(b)			
(c)			
15. Dividends and undivided profits or shares of stock at close of the taxable year	183,698.67		
16. Total	\$ 238,073.40		





# CLAIM

TO BE FILED WITH THE DIRECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID

The Director will indicate in the block below the kind of claim filed, and fill in, where required, the certificate on the back of this form.

- REFUND OF TAXES ILLEGALLY, ERRONEOUSLY, OR EXCESSIVELY COLLECTED.  
 REFUND OF AMOUNT PAID WITH STAMPS UNUSED OR USED IN ERROR OR EXCESS.  
 ABATEMENT OF TAX ASSESSED (not applicable to estate, gift, or income taxes).

JUN 12 1954  
 RECEIVED  
 DIV. 9  
 EXHIBIT 61  
 RESPONDENTS

DIRECTOR'S STAMP  
 (Date received)  
 RECEIVED  
 95 JAN 14 1954  
 DIRECTOR INT REV  
 LOS ANGELES  
 TELLER - #5

TYPE  
OR  
PRINT

Name of taxpayer or purchaser of stamps ADVANCE TRUCK COMPANY

Street address 2174 J Alameda Street

City, postal zone number, and State Los Angeles 10, California

- District in which return (if any) was filed 6th District California
- Period (if for tax reported on annual basis, prepare separate form for each taxable year) from Jan. 1 1950 to Dec. 31 1950
- Kind of tax income and excess profits tax
- Amount of assessment, \$29,945.18; dates of payment as prescribed by law
- Date stamps were purchased from the Government
- Amount to be refunded \$ 5,348.06
- Amount to be abated (not applicable to income, estate, or gift taxes)

The claimant believes that this claim should be allowed for the following reasons:

Taxpayer erroneously reported income on the accrual basis whereas taxpayer is and always has been on a cash basis.

Tax paid	\$29,945.18
tax liability per amended return	
filed concurrently herewith	<u>24,197.12</u>
refund due	<u>\$ 5,348.06</u>

CERTIFICATE FOR CLAIM FOR REFUND

I hereby certify that this claim for refund was prepared by me on behalf of the claimant and that the facts stated therein are true and correct to the best of my knowledge and belief.

PREPARED BY: FRANK & FRANK  
950 So. Spring Street  
Los Angeles 14, Calif.

(Attach letter-size sheets if space is not sufficient)

I declare under the penalties of perjury that this claim (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is true and correct.

Signed Advance Truck Co  
By H. G. Harrison, Pres

Dated Jan 7<sup>th</sup>, 1954

(SEE INSTRUCTIONS ON OTHER SIDE)

16-11300-7



[Title of Tax Court and Cause.]

FINDINGS OF FACT AND OPINION

Taxpayer was properly on the cash basis for keeping its books and reporting its tax in 1949 when certain services were rendered. As directed by the Interstate Commerce Commission it changed its method of keeping its books to the accrual method as of January 1, 1950. Held, taxpayer was properly on the accrual method for reporting income in 1950, but must include in income payments received in 1950 for services performed in 1949, under the provisions of section 42, I.R.C. of 1939.

CHARLES H. CHASE, ESQ.,

For the Petitioner.

GEORGE E. CONSTABLE, ESQ.,

For the Respondent.

Opinion

Mulroney, Judge:

Respondent determined a deficiency in the income and excess profits tax of petitioner for the year 1950 in the sum of \$3,618.14. Petitioner does not contest respondent's adjustments which resulted in the deficiency but petitioner claims an overpayment of income tax for said year in the sum of \$5,348.06.

The only question for decision is whether amounts received in 1950 for services rendered in 1949, are includible in 1950 income when petitioner was properly on the accrual basis for reporting income in

that year, and properly on the cash basis for reporting income in 1949.

All of the facts were stipulated and are found accordingly. Petitioner is a corporation organized and existing under the laws of the State of California with its principal place of business in Long Beach, California. During all of the years mentioned herein the petitioner filed its tax returns on a calendar year basis with the then collector of internal revenue for the sixth district of California, Los Angeles, California, and his successor, the district director of internal revenue for the Los Angeles, California district.

The petitioner is a common carrier and is engaged in the business of hauling and storing tubular goods for hire. It does not engage in manufacturing, processing, purchasing or selling merchandise. Its business does not require the use of inventories, and inventories are not an income-producing factor. At no time mentioned herein has the petitioner changed its type of business operation.

From the date of its incorporation through December 31, 1949, it properly kept its books of account and properly reported its income for Federal income tax purposes on the cash receipts and disbursements method.

On January 16, 1950, the petitioner received a letter from the Interstate Commerce Commission informing the petitioner that it was classified as a Class 1 Motor Carrier, and that effective as of

January 1, 1950, the petitioner would be required to keep its accounts in conformity with the Uniform System of Accounts prescribed by the Interstate Commerce Commission.

The system of accounting prescribed by the Interstate Commerce Commission is set forth in Uniform System of Accounts for Class 1 Common and Contract Motor Carriers of Property, Prescribed by the Interstate Commerce Commission in accordance with Part II of the Interstate Commerce Act. The Uniform System of Accounts of the Interstate Commerce Commission prescribes an accrual method of accounting.

Section 222 (g) of the Interstate Commerce Act provides that willful failure or refusal to keep accounts and records in the form and manner prescribed by the Commission shall be a misdemeanor punishable by a fine of not more than \$5,000 for each offense.

In conformity with the directive of the Interstate Commerce Commission the petitioner, as of January 1, 1950, changed its method of accounting to the method prescribed in the Uniform System of Accounts. Petitioner has kept its books and records on an accrual basis commencing January 1, 1950, to the present time.

On or before March 15, 1951, the petitioner filed its income tax return for the calendar year 1950, in which it reported gross receipts from its operations in the amount of \$284,092.54. Included in this

amount was income from services rendered in 1950 of \$18,467.96 which was represented by accounts receivable at December 31, 1950. Also included in gross receipts was the sum of \$20,431.48, which amount was collected during the month of January, 1950, for services rendered during the month of December, 1949. On the accrual method of accounting, the latter amount would have represented accounts receivable at December 31, 1949.

The petitioner reported cost of operations in the amount of \$140,629.46, which sum included the amount of \$196.20 which represented accounts payable at December 31, 1950. The amount of income and excess profits tax shown to be due on the return was the sum of \$27,603.51.

While petitioner stated on said income tax return that said return was made on the basis of cash receipts and disbursements, it actually was prepared on the accrual basis and the parties herein have so stipulated.

On or about December 3, 1951, the petitioner filed an amended income tax return for the calendar year 1950 showing an additional amount of income tax due. The total income and excess profits tax paid by the petitioner for the calendar year 1950 was in the amount of \$29,545.18.

The petitioner has not at any time filed an application requesting the permission of the respondent to change the method of keeping its books of account or manner of reporting its income from a



cash receipts and disbursements method to an accrual method.

On May 11, 1955, respondent issued a notice of deficiency in which he accepted petitioner's income tax return for the calendar year 1950 which was prepared and filed upon the accrual basis. In this statutory notice of deficiency certain adjustments were made which, as stated, are not contested here, but respondent did not eliminate from the petitioner's income for 1950 the accounts receivable at December 31, 1949. Petitioner now concedes that respondent may require the petitioner to report its income on the accrual basis but contends that its income must be recomputed by eliminating the accounts receivable at the beginning of the year 1950.

The sole question here is whether the sum collected in 1950 on 1949 accounts receivable were properly included in 1950 income in view of the fact that petitioner was properly on the cash basis in 1949 and properly on the accrual basis in 1950. Petitioner's contention is that because it was properly on the accrual basis for reporting in 1950, these amounts were not taxable in that year. Respondent asserts that those amounts which were collected in 1950 constitute taxable income in that year regardless of petitioner's change in method of accounting to the accrual basis.

To sustain its position—that the amounts in controversy are not taxable in 1950—petitioner relies upon a line of cases where there was a change in the method of reporting and it was held the Com-

missioner could not include in the year of change to the accrual method, accounts receivable which should have been accrued in the prior year. Petitioner cites *Commissioner v. Mnookin's Estate*, 184 F. 2d 89, affirming 12 T. C. 744; *Robert G. Frame*, 16 T. C. 600, affd. 195 F. 2d 166; *David W. Hughes*, 22 T. C. 1; *Clement A. Bauman*, 22 T. C. 7; *Welp v. United States*, 201 F. 2d 128; *Caldwell v. Commissioner*, 202 F. 2d 112; *Commissioner v. Dwyer*, 203 F. 2d 522; and *Commissioner v. Schuyler*, 196 F. 2d 85.

In none of the cited cases did the taxpayer in the years before the change-over keep its books and compute and report its income on an entirely proper basis. That is an important distinction. In the cited cases the Commissioner was attempting to tax amounts that had not been received or that should have been accrued as income in a prior year not before the Court. That is not true here. The amounts here in controversy had all been received and were not income in 1949 because petitioner at that time was properly reporting income on the cash basis, and the amounts were not received in that year.

Section 42 of the Internal Revenue Code of 1939 provides, in part, that

The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under Section 41, any such amounts are to be properly accounted for as of a different period. \* \* \*



It cannot be argued that the receipt of \$20,431.48 in January 1950 for services rendered was anything other than an item of gross income. The narrow question is whether this item for services is includible in gross income in 1949 when the services were rendered or 1950 when the \$20,431.48 was received in payment for said services.

The statute is designed to see to it that all items of gross income shall be properly accounted for in gross income for some year. No item of gross income is to escape. It names the year "in which received" as the proper year to include the item unless, by virtue of some permissible method of accounting, the item is to be properly accounted for as of a different period. Since the \$20,431.48 was received in 1950, that is the year it is to be included in gross income unless petitioner can show the item should have been "properly accounted for" in 1949. Far from showing that this item should have been properly accounted for in 1949, petitioner in effect, stipulates that this item could not have been "properly accounted for" in 1949. That is the full force of the stipulation that petitioner in the year 1949 "properly kept its books of account and properly reported its income for Federal income tax purposes on the cash receipts and disbursements method." In short, the stipulated facts preclude the application of the "unless" clause of the statute.

With no other year for properly accounting for the item the command of the statute is that the year

“in which received” or in this case 1950, is the year the item is to be included in the gross income.

The fact that the change from the cash, to the accrual method of keeping its books was involuntary, and done upon the order of the Interstate Commerce Commission, is not material. Petitioner, when it filed its 1950 return on the accrual basis was merely following section 41, Internal Revenue Code of 1939, by making a conforming change in its method of reporting income. Respondent expressly accepted the change to the accrual method of reporting as he had a right to do. *Josef C. Patchen*, 27 T. C. 592.

Petitioner's argument on brief is that since it was “required” to make the change from cash to accrual method of reporting, the respondent cannot “require the taxpayer to report as income in the year of change items which are not income or do not represent income according to the accrual method.” The answer to this argument is that under section 42, *supra*, every taxpayer is required to report every item of gross income that he receives in some year. It is either the year of receipt or some other year when it could be properly accounted for. When, as here, there is no other year when it could properly be accounted for, then the fact that the year of receipt is an accrual year for reporting, is immaterial. The statute does not say the item shall be included in income in the year of receipt, if that would be proper according to the method of accounting then being employed by the taxpayer. The method of accounting of the taxpayer in the year of receipt, and

whether that method was the result of a voluntary or involuntary change-over, are both immaterial.

Decision will be entered for the respondent.

Filed January 20, 1958.

Served January 20, 1958.

---

Tax Court of the United States  
Washington

Docket No. 59010

ADVANCE TRUCK COMPANY, a Corporation,  
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Opinion, filed January 20, 1958, it is:

Ordered and Decided: That there is a deficiency in income and excess profits tax for the year 1950 in the amount of \$3,618.14, and that there is no overpayment in such tax due to petitioner for said year.

[Seal] /s/ JOHN E. MULRONEY,  
Judge.

Entered January 29, 1958.

Served January 31, 1958.

On or about January 14, 1954 the petitioner filed a timely claim for refund with the respondent claiming an overpayment of taxes for the taxable year 1950 on the grounds that it was properly on the cash basis for the purposes of reporting its income for Federal income and excess profits. On May 11, 1955 the respondent issued a notice of deficiency in which he rejected petitioner's claim for refund and determined that petitioner was required to report its income on the accrual method. The respondent made certain adjustments to petitioner's income which were not contested in the Tax Court. The petitioner claimed in its petition to the Tax Court that if the respondent's determination that the petitioner was required to report its income on the accrual method was correct, its income for the calendar year 1950 should be recomputed by eliminating from gross receipts the accounts receivable at December 31, 1949, which on the accrual method of accounting were not income to the petitioner in 1950. Such a recomputation would result in an overpayment by petitioner of its income and excess profits tax for the calendar year 1950.

The Tax Court in its opinion held that the petitioner was required to report its income for Federal income tax purposes on the accrual method for the calendar year 1950 and that under the provisions of Section 42, 1939 Internal Revenue Code, the accounts receivable at December 31, 1949 were income of the petitioner in the year 1950 when received.

On the basis of its opinion, the Tax Court entered its decision that there was no overpayment in in-

come and excess profits due to the petitioner for the year 1950.

Wherefore, it is prayed that this Honorable Court review the matters set forth herein and reverse the decision of the Tax Court of the United States.

Respectfully submitted,

/s/ CHARLES H. CHASE,  
Counsel for Petitioner on  
Review.

Of Counsel:

/s/ L. A. LUCE.

Received and filed April 14, 1958, T.C.U.S.

---

[Title of Court of Appeals and Cause.]

Tax Court Docket No. 59010

STATEMENT OF POINTS TO BE  
RELIED UPON

Advance Truck Company, a corporation, petitioner on review submits the following Statement of Points upon which it intends to rely as the basis of its petition for review.

That the Tax Court of the United States erred.

1. In finding as a fact that the petitioner's income and excess profits tax return for the taxable year 1950 was actually prepared on the accrual basis. This fact was not stipulated by the parties, and the finding is not supported by the evidence.

1957

Nov. 12—Reply Brief for Petitioner filed. Served 11/18/57.

1958

Jan. 20—Opinion filed. Judge Mulronev. Decision will be entered for respondent.

Jan. 29—Decision entered, Judge Mulronev. Served 1/31/58.

Apr. 14—Petition for review by U.S. Ct. of Ap. 9th Cir., filed by petitioner.

Apr. 14—Proof of service of petitioner for review filed.

Apr. 14—Statement of Points with proof of service thereon filed.

Apr. 14—Designation of Contents of Record on Rev. with proof of service thereon filed by petitioner.

Apr. 14—Notice of filing Designation of Contents of Record on Review with proof of service thereon filed.

---

[Title of Tax Court and Cause.]

### CERTIFICATE

I, Howard P. Locke, Clerk of the Tax Court of the United States, do hereby certify that the foregoing documents, 1 to 11, inclusive, constitute and are all of the original papers on file in my office as called for by the "Designation of Contents of Record", including Joint Exhibits 1-A, 2-B, and 6-F,





